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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 380

RONALD L. TODD, et al.,

Petitioners,

vs.

JOINT APPRENTICESHIP COMMITTEE, etc., and BETHLEHEM STEEL COMPANY, and LOCAL UNION NO. 1, etc., et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

Petitioners, Ronald L. Todd, Michael Cochran and James Hill, respectfully pray for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review its judgment vacating a judgment and decree of the United States District Court for the Northern District of Illinois granting petitioners a preliminary injunction, and remanding the case to that court with directions to dismiss the complaint as to all defendants as moot.

OPINIONS BELOW.

The opinion of the District Court for the Northern District of Illinois is reported at 223 F. Supp. 12, and is attached hereto as Appendix A, pp. 1a-28a.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 332 F. 2d 243, and is attached hereto as Appendix B, pp. 29a-37a.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

1. The date of the judgment sought to be reviewed was May 26, 1964.

2. No petition for rehearing was filed and no order has been entered granting an extension of time within which to file a petition for certiorari.

3. The statutory provision believed to confer jurisdiction on this Court to review the judgment below by writ of certiorari is 28 U.S.C. 1254(1).

QUESTION PRESENTED FOR REVIEW.

Where a district court in a class action finds that Negroes have been totally excluded from an apprenticeship program jointly financed and controlled by a union, employers, the federal and a state government, and a board of public education, and the court issues a preliminary injunction requiring admission of two of the named plaintiffs to the apprenticeship program and the union, but stays enforcement of the decree pending appeal, is it proper for the Court of Appeals to order dismissal of the complaint as moot simply because the first employer which undertook to hire plaintiffs as apprentices completed its sub-contract on a single federal construction job after the effective date of the decree but before the appeal was considered on the merits?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Involved are the Fifth and Fourteenth Amendments to the Constitution of the United States (Appendix C, p. 38a); 28 U.S.C., §§1331, 1343(3), 1346(a)(2), and 1361; 29 U.S.C., §§157 and 158; 42 U.S.C. §§1981 and 1983 (all set forth in Appendix D, pp. 39a-47a; Rules 17(b) and 23(a)(3) of the Federal Rules of Civil Procedure (Appendix E, p. 48a); and Presidential Executive Order No. 10925, March 8, 1961, 26 F.R. 1977 (Appendix F, pp. 49a-64a).

STATEMENT OF THE CASE.

On October 26, 1962, defendants Paschen Contractors, Inc., and Peter Kiewit Sons' Co. (Contractor), entered into a contract with the General Services Administration (GSA) to construct a United States Courthouse and Federal Office Building in Chicago, Illinois, to be paid for, from and with public funds of the United States. The Contractor then entered into various sub-contracts including one with defendant Bethlehem Steel Company (Bethlehem) for the fabrication and erection of structural steel on that building. Construction on the building was begun shortly thereafter and has continued down to the present time.

Both the contract and sub-contract specifically included, by reference, the terms of Presidential Executive Order No. 10925, March 6, 1961. That order, *inter alia*, prohibits racial and other discrimination in employment on government contracts such as this one. Those contracts also provided that apprentices would be permitted to work on the job only under a bona fide apprenticeship program registered and recognized either by the state or the federal government.

The Iron Workers Bridge and Structural Union, Local No. 1, and Iron Workers District Council of Chicago & Vicinity, which together with certain of their officers and representatives are defendants herein (Union), has a collective bargaining agreement with Bethlehem whereby it was the sole supplier of ironworkers to Bethlehem on the federal courthouse.

The Joint Apprenticeship Committee of the Steel Workers of Chicago, made up of representatives of employers

in the Chicago area and the Union, which Committee and its members are defendants (the Joint Committee), is now, and has been since inception of the program in 1952, responsible for the administration of the ironworker apprenticeship program in the Chicago area. That program was approved in 1953 by the United States Department of Labor of which the defendant Alvin Dost was Regional Director of the region which includes the Chicago area.

Under the terms of the program any male between 18 and 25 may be indentured by and to the Joint Committee as an ironworker apprentice. He then begins a three year combination of on-the-job and school training. The Joint Committee endeavors to keep him continuously employed during his apprenticeship and during the life of the program no apprentice has been unemployed for more than a day or two during the construction season. Apprentices are paid a minimum hourly wage of $2.91 for both work and school attendance with double time for school attendance in the evening.

The school portion of the program is provided at Washburne Trade School, a public school operated by the Board of Education of the City of Chicago, one of the defendants herein, a municipal corporation of the State of Illinois operating the public school system in the City of Chicago with public funds, facilities and employees. The teachers in the apprenticeship program are part time employees of the Board of Education selected on the advice of the Joint Committee, and paid by the Board of Education which in turn is reimbursed for about one-half of these salaries by the State of Illinois from federal funds allocated to the state for purposes of apprentice training.

In accordance with the requirements of Presidential Executive Order No. 10925, the Contractor reported to

GSA, of which the defendant Dominic Tesauro is the Regional Administrator, that on March 25, 1963, there were no Negroes, either journeymen or apprentices, in the Union. Bethlehem reported to GSA on May 15, 1963, that as of April 14, 1963, it had a total of 101 employees on the project site of whom 79 were structural ironworkers, 6 being apprentices, and that none of these employees was a Negro. Later, Bethlehem reported to GSA that as of June 16, 1963, it had 146 employees on the project site of whom 128 were structural ironworkers, 8 being apprentices, and that none was a Negro.

On May 23, 1963, on demand by GSA, Bethlehem requested of the Union written assurances that the Union would comply with the non-discrimination policies of Executive Order No. 10925. The Union did not provide such a statement. At about the same time, the Union informed Tesauro, Bethlehem and Dost that it would not accept Negro structural ironworkers or apprentices for work on this construction project.

The plaintiffs, Ronald L. Todd, Michael Cochran and James Hill are male Negroes ranging in age from 18 to 23. On or about June 7, 1963, they were referred to the Contractor by the Illinois State Employment Service and the Department of Labor as applicants for employment as ironworker apprentices after having been examined and found to be possessed of both aptitude for, and interest in, that trade. About two weeks later Bethlehem examined the plaintiffs and found them to be qualified to be hired as apprentice ironworkers. On the same day each of the plaintiffs properly executed and filed an application for indenture as an ironworker apprentice with the Joint Committee. On or about June 28, 1963, Bethlehem requested the Joint Committee to indenture two of the plain-

tiffs and stated that they would be employed if they were indentured. None of the plaintiffs was ever indentured by the Joint Committee or submitted to Bethlehem for employment.

Tesauro made a series of unsuccessful attempts beginning on July 1, 1963, to induce the Joint Committee to indenture the plaintiffs. Similarly, Bethlehem unsuccessfully renewed its request of the Joint Committee.

By letter on July 15, 1963, the Joint Committee again denied the request and offered to supply any additional apprentices required from among the other 150 applicants for apprenticeship training the Committee claimed to have in its files, none of whom was a Negro. Subsequently, many of these alleged applicants for apprenticeship training were found by the Committee to be unavailable for such training.

On or about July 19, 1963, Tesauro referred the whole matter to the President's Committee on Equal Job Opportunity which had been set up under the terms of Presidential Executive Order No. 10925. About two months later that Committee informed Tesauro in writing that it would take no direct action in the matter though its investigation confirmed the obvious violations of the executive order. Immediately thereupon, asserting that under color of law they were being denied rights guaranteed by the Constitution and laws of the United States and to enforce a Presidential Executive Order and relying on 28 U.S.C., §§1331, 1343(3), 1346(a)(2) and 1361; and 42 U.S.C. §§1981 and 1983, plaintiffs filed a complaint in the district court seeking federal judicial aid for their effort to be admitted to the ironworkers apprenticeship program and in the alternative ask-

ing the court to enjoin performance of the contract until they were so included and employed.

The court heard extensive testimony on the application for a preliminary injunction between September 27 and October 10, 1963, and on October 16, 1963, the court rendered an opinion (Appendix A) which the Court of Appeals rightly described as "able, extensive and comprehensive," 332 F. 2d 243, 246, finding that Negroes had been systematically excluded from the apprenticeship program and the Union, and concluded that two of plaintiffs, Todd and Hill, were entitled to a preliminary injunction as to all defendants save the Contractor. On November 8, 1963, *nunc pro tunc* as of October 16, 1963, as he had stated on that latter date would be done, the district court judge signed the decree of preliminary injunction which is attached hereto as Appendix G, pp. 65a to 67a.

The preliminary injunction required the Joint Committee to indenture Todd and Hill as apprentices and to tender them to Bethlehem for employment as apprentices; required the Union to admit them as apprenticeship members and Bethlehem to employ them; required the Chicago Board of Education to admit them to its apprenticeship classes; and required the Regional Director of the Department of Labor to use the full facilities of his office to assure that there would be no further discrimination in the apprenticeship program on account of race.

Counsel for the Union and the Joint Committee advised the court of their intention to appeal and the court stayed the effect of the decree pending that appeal. Timely notices of appeal were filed on behalf of the Joint Committee, the Union and Bethlehem but no appeal was filed by any other defendant.

On or about October 25, 1963, Bethlehem notified the district court that it had completed work on its sub-contract on or about October 23, 1964, after the effective date of the decree and prior to its notice of appeal being filed.

After the record in the district court had been filed with the Court of Appeals for the Seventh Circuit, but prior to any consideration of the appeal on its merits, the defendants-appellants moved to remand the cause to the district court with directions to that court to dismiss the cause as moot. On consideration of that motion the Court of Appeals for the Seventh Circuit vacated the judgment below and ordered the cause remanded to the district court with instructions to dismiss the complaint as to all the defendants as moot. This petition for certiorari seeks review of that order of the Court of Appeals for the Seventh Circuit which has been stayed by that court pending disposition of this petition.

REASONS FOR GRANTING THE WRIT AND ARGUMENT AMPLIFYING SAME.

The Court of Appeals decision is in conflict with the applicable decisions of this Court and should be reviewed and reversed by this Court.

The Court of Appeals decided that this case has become moot because it was of the opinion that, 332 F. 2d 243, 247:

> "The subject matter of the litigation is no longer an actual controversy. The time for determination of the questions involved in this action has passed. No relief within the scope of the complaint could now be granted."

Thus the court below simultaneously concluded that there was no longer any actual controversy and that no judicial relief could now be granted. As authority for those conclusions the court below cited only one of its own prior decisions, *Johnson-Kennedy Radio Corp.* v. *Chicago Bears Football Club* (C.A. 7th, 1938), and a prior decision of this Court, *Amalgamated Association, etc.* v. *Wisconsin Employment Relations Board*, 340 U.S. 416 (1951).

Both of these cases are readily distinguishable from the case at bar. Neither involved any consideration of the availability of effective judicial remedy. In both, the original controversy had abated because of the passage of time.

In *Johnson-Kennedy Radio Corp.* v. *Chicago Bears Football Club, Inc., supra,* plaintiff sought to protect its exclusive contract to broadcast the 1936 "home" football games of the Chicago Cardinals Football Club, usually played in Comiskey Park, by seeking to restrain defend-

ants from broadcasting the account of a Cardinals-Bears game scheduled for November 29, 1936, at Wrigley Field, the Bears home field. A few days before the game the court issued a preliminary injunction so restraining the defendants and not until after the game had been played did the defendants answer the complaint. Nearly a year later a permanent injunction to the same effect was entered. On appeal the Court found no controversy then existing and *dismissed the appeal*. The court pointed out, 97 F. 2d 223, 225:

> "It will thus be seen that the essential question presented by the bill on its merits was as to which team, the Bears or the Cardinals had the exclusive rights in the broadcast of the football games (sic) to be played by such teams at Wrigley Field on November 29, 1936.
>
> * * * * *
>
> "The subject matter of the litigation has passed into history. We are unable to conceive of any reason why this court should decide a controversy, the determination of which could serve no beneficial purpose of any of the parties. The question has become moot and under such circumstances the authorities are numerous that we should dismiss the appeal."

In *Amalgamated Association, etc.* v. *Wisconsin Employment Relations Board*, supra, this Court was asked to review an affirmance of an arbitration award by the Wisconsin Supreme Court. By the terms of the Wisconsin statute pursuant to which the award had been made, it continued effective for only one year from its effective date unless earlier terminated by agreement of the parties. This Court ruled, 340 U.S. 416, 418:

> "We are informed that this award was superseded by agreement, and, in any event, the one year period has elapsed. There being no subject matter upon which

the judgment of this court can operate, the cause is moot."

The instant case is in sharp contrast to these cases. The Joint Committee continues to operate an apprenticeship program in conjunction with public officials and with public funds and facilities. The Chicago School Board continues to provide apprenticeship training at the Washburne Trade School. But the Joint Committee has not indentured plaintiffs. The racial discrimination which the district court found continues down to this present moment. Equally important, federal funds continue to be expended on construction work in the Chicago area and elsewhere with Negroes denied employment as ironworkers and training as apprentices in connection with such construction all in violation of the Constitution of the United States, the statutes and Presidential executive order.

Erroneously, the court below found that it had before it "merely a temporary injunction applicable only to the specific contract project to which it is addressed." 332 F. 2d 243, 247. The injunction itself, however, makes it clear that the district court's requirement of admission of the plaintiffs to the apprenticeship program was not so limited a remedy in light of the facts. Indenture of the plaintiffs and their employment by Bethlehem on the federal courthouse project in compliance with the decree would have been simply the start of their apprenticeship training which under the terms of the program would have lasted for three years. When their employment by Bethlehem ended, if it did, the Joint Committee would have found them other employment as they have done successfully for other apprentices. Even if the plaintiffs had been indentured and employed by Bethlehem when it

began performance of its subcontract, their apprenticeship would not have been terminated upon the completion of the ironwork on the federal courthouse. It necessarily follows then that the actual controversy concerning their exclusion from the apprenticeship program has not been shown to have been resolved and a continuing effective judicial remedy was provided by the district court.

The court below confused the relief requested in the complaint with the controversy actually involved in this case as demonstrated by the evidence heard and considered by the district court. This is not surprising since the Court of Appeals never considered this case on its merits. It is true that the plaintiffs in the complaint requested that the court order that they be hired on the federal courthouse as apprentices, or that, in the alternative, expenditures of federal funds on that project be enjoined. After hearing the evidence in support of the application for preliminary injunction, however, the district court, exercising its undoubted discretion as to the remedy to be provided, ordered that the plaintiffs be indentured as apprentices, that they be admitted to the Union as apprentices, that Bethlehem hire them as apprentices, that the Chicago School Board admit them to apprenticeship classes, and that the U. S. Department of Labor police the arrangement to see that there was no further racial discrimination in the apprenticeship program. What the court below has done is to seize upon an apparent present impossibility of compliance with the precise terms of the decree by *one* of the parties to the litigation, Bethlehem, to seek to justify the court's ignoring the actual controversy between the parties and the class they represent on the one hand, and the Union and the public officials on the other. This, despite the fact

that there is not even a suggestion, much less a showing, that the judicial remedy cannot be effective as to these other defendants. Indeed, since Bethlehem is still in business the remedy conceivably can be made effective as to it on some other job!

Prior decisions of this Court demonstrate that the fortuitous circumstance of the completion of Bethlehem's sub-contract in connection with the construction of the federal courthouse cannot properly be given the legal effect that the court below gave it. At the very same term in which this Court decided *Amalgamated Association, etc.* v. *Wisconsin Employment Relations Board, supra,* this Court also decided *Local 47, etc.* v. *NLRB,* 341 U.S. 707 (1951). In that case, a flooring sub-contractor complained to the NLRB that he was the victim of an unfair labor practice in that a strike of union carpenters working for the general contractor on a construction job had been called to compel the complainant to cease the use of non-union labor in carrying out its sub-contract. The Board found that continuance of the strike became unlawful because a statute specifically prohibiting such strikes became effective during the pendency of the strike. This Court agreed.

Most important here, however, was this Court's conclusion with respect to the question of mootness raised in that case. This Court said, 341 U.S. 707, 715:

> "This case has not been rendered moot by the completion of the renovation project. The complaint was against petitioners' use of secondary pressure upon Watson's in a manner proscribed by the statute. The use of such pressure on this renovation project was merely a sample of what might be repeated elsewhere if not prohibited. *The underlying dispute between peti-*

tioners and Watson's has not been shown to have been resolved." (Emphasis supplied.)

This Court's observations in that case are equally applicable here. The underlying dispute between petitioners and these defendants has not been shown to have been resolved and petitioners continue to be the victims of the defendants' unlawful conduct.

The decision of this Court just cited followed earlier decisions to the same effect. In fact, the decision of the court below in the instant case is in conflict with a long line of prior decisions of this Court. For example, in *Federal Trade Commission* v. *Goodyear Rubber Co.*, 304 U.S. 257 (1938), this Court had before it, as in this case, a decision of a court of appeals based on the conclusion of that court that the matter before it had become moot. In that case the FTC had found Goodyear to be guilty of a violation of the Clayton Act in selling merchandise at discriminatory prices. After the FTC decision, but prior to the hearing on Goodyear's petition to the court of appeals for review, Congress amended the section of the Clayton Act involved. Goodyear thereupon informed the court of appeals that in light of the statutory amendment it had terminated the arrangement found by the FTC to be discriminatory. Because it was of the opinion that this abated the controversy between the parties as to the illegal character of Goodyear's former practices, the court of appeals concluded that the case had become moot and, without considering the merits, set aside the order of the Commission and remanded the cause to the FTC expressing no opinion as to whether the FTC could file a supplemental complaint under the statute as amended. Both the Commission and Goodyear, for different reasons, asked that the case be remanded to the court

of appeals with directions to determine it on the merits. This Court did so, pointing out, 304 U.S. 257, 260:

> "Discontinuance of the practice which the Commission found to constitute a violation of the Act did not render the controversy moot. [Cases cited omitted.] The Commission, reciting its findings and the conclusion that respondent had violated the act, required respondent to cease and desist from the particular discriminations which the order described. That is a continuing order. Its efficacy, if valid, was not affected by the subsequent passage or the provisions of the amendatory Act. As a continuing order, the Commission may take proceedings for its enforcement if it is disobeyed. But under the statute respondent was entitled to seek review of the order and to have it set aside if found to be invalid. The question which both parties sought to have the Circuit Court of Appeals decide was whether respondent's conduct was a violation of the original statute. Upon the conclusion that it was such a violation, the Commission based its order. Neither the transactions subsequent to that order nor the passage of the amendatory Act deprived the respondent of its right to challenge the order and to have its validity determined or the Commission of its right to have its order maintained if validly made.
>
> "The decree of the Circuit Court of Appeals is reversed and the cause is remanded to that court for a determination on the merits."

The decisions relied upon by this Court in the *Goodyear* case make it clear that it was never intended that parties should be denied judicial relief where an actual controversy persists as the court below would do. It is equally clear that petitioners' right to a remedy cannot be made to hang on whether respondents concur, as they did in the *Goodyear* case, that the Court of Appeals should consider the matter on the merits.

At least as early as its decision in *California* v. *San Pablo & T.R. Co.*, 149 U.S. 308, 314 (1893), this Court pointed out the basis for the "mootness" limitation on judicial action when it said:

> "The duties of this court, as of every judicial tribunal, is limited to determining the rights of persons or property which are actually controverted in the particular case before it."

It is clear that the reason for this rule is that by the Constitution of the United States the federal judicial power is limited to decisions of actual cases and controversies between adverse interests with respect to which the court's judgment will be effective. See Stern & Gressman, *Supreme Court Practice*, Ch. 16, p. 434 (3d Ed. BNA, 1962).

It is clear that the controversy between the parties in the instant case persists. It is equally clear that federal judicial power is not so limited that it cannot provide an effective remedy for these petitioners.

Ironically, the decision of the court below is not only in conflict with prior decisions of this Court it is even in conflict with a prior decision of the court below. In *Ramsberg* v. *American Investment Co. of Illinois*, 231 F. 2d 333 (1956), stockholders sought to restrain a corporate merger but the district court refused a preliminary injunction. The merger was completed prior to decision on appeal. Nevertheless the court refused to dismiss the appeal as moot relying on prior decisions of this Court which were ignored in the instant case.

The doctrine of mootness has certainly never been intended by this Court to deprive persons of judicial remedy in an appropriate case. In this case the district court

provided a remedy but the Court of Appeals, without considering the matter on the merits, and ignoring the terms of the remedy provided, has acted to deprive the petitioners of the badly needed judicial aid to protect their constitutional rights.

Because of this and because the decision of the court below is inconsistent with the applicable decisions of this Court a writ of certiorari to review and reverse the decision below is required.

CONCLUSION.

For the foregoing reasons petitioners respectfully urge this Court to grant its writ of certiorari to review and reverse the decision of the court below.

Respectfully submitted,

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Attorneys for Petitioners.

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

* * (Caption No. 63 C 1739) * *

October 16, 1963

OPINION OF THE DISTRICT COURT

Negroes brought class action against union, union offi-ers, apprenticeship committee of union, contractor, sub-ontractor, regional administrator of the General Services Administration, the regional director of the Bureau of Apprenticeship and Training, and the Board of Education f the City of Chicago to enjoin discrimination against egroes with respect to job opportunities in iron construc-ion work. The District Court, Campbell, Chief Judge, held hat where the federal government through two of its gencies and the state through one of its agencies made possible for the union and its apprenticeship committee o realize and perpetuate discriminatory practices against egroes, union and apprenticeship committee would be or-ered to cease and desist from further discrimination.

Judgment in accordance with opinion.

CONTRACTS [187(1)]
UNITED STATES [70(5)]

Negroes, who sought work with subcontractor in con-truction of United States courthouse and office building eing constructed pursuant to contract between General ervices Administration and contractor and subcontractor,

were not third-party beneficiaries of contract and subcontract which required contractor and subcontractor not to discriminate on basis of race, religion, or ethnic background in hiring of their employees.

2. Courts [282.2(11)]

Federal District Court had jurisdiction of class action by negroes against union, officers of union, apprenticeship committee of union, contractor, subcontractor, regional administrator of General Services Administration which had contracted with contractor for construction of United States courthouse and office building, regional director of Bureau of Apprenticeship and Training, and Board of Education of Chicago to enjoin discriminatory denial of job opportunities to negroes in iron construction work in violation of federal Constitution. Fed. Rules Civ. Proc. rule 23(a)(1), 28 U.S.C.A.; U.S.C.A. Const. Amends. 5, 14; 28 U.S.C.A. §§ 1331, 1343(3), 1346(a)(2), 1361; 42 U.S.C.A. §§ 1981, 1983.

3. Federal Civil Procedure [217]

Men, whose names appeared on apprenticeship list of union ahead of negroes, were not indispensable and necessary parties in class action by negroes to enjoin discriminatory denial of job opportunities in iron construction work in violation of federal Constitution. Fed. Rules Civ. Proc. rule 23(a) (1), 28 U.S.C.A.; U.S.C.A. Const. Amends. 5, 14; 28 U.S.C.A. §§ 1331, 1343(3), 1346(a) (2), 1361; 42 U.S.C.A. §§ 1981, 1983.

4. Action [2]

Where there is a right there should be a remedy.

(Appendix A)

5. Constitutional Law [215]

State or individual acting under color of state authority cannot unreasonably discriminate against race, religious group, or ethnic group in granting of job opportunities. U.S.C.A. Const. Amends. 5, 14.

6. Constitutional Law [213]

Actions of all governmental agencies, be they legislative, executive, or judicial, are attributable to public body and can be cause of constitutional violations.

7. Constitutional Law [215, 275(1)]

Racial discriminatory job practices of union, absent facts of public body consent, assistance, or support, do not violate due process and equal protection clauses of the federal Constitution. U.S.C.A. Const. Amends. 5, 14.

8. Constitutional Law [215]

Private citizen or organization, to extent that their activities in discriminating against negroes with respect to job opportunities remain entirely private and unrelated and non-dependent on sovereign, cannot be charged with denial of equal protection of law. U.S.C.A. Const. Amend. 14.

9. Constitutional Law [215]

Where federal government through two of its agencies and state through one of its agencies made it possible for union and its joint apprenticeship committee to perpetuate their practices of discriminating against negroes with respect to job opportunities in iron construction work, union, union committee, and union officers would be ordered to cease and desist from further discrimination against negroes. U.S.C.A. Const. Amends. 5, 14.

(Appendix A)

William R. Ming, Jr., Harold McDermid, Chicago, Ill., for plaintiffs.

James P. O'Brien, U. S. Atty., by John P. Lulinski and John J. Crowley, Chicago, Ill., for defendant Dominic Tesauro.

John J. Faissler and Bernard J. Nussbaum, Chicago, Ill., for defendant Pasehen Contractors, Inc.

Paul R. Conaghan, Chicago, Ill., and G. W. Thursby, for defendant Bethlehem Steel Co.

Bernard M. Mamet and Sinclair Kossoff, Chicago, Ill., for defendant Local No. 1.

Jerome A. Frazel, Jr., Robert Kelling, Chicago, Ill., for defendant Joint Apprenticeship Committee.

John T. Mehigan, Thomas R. Tyrrell, Chicago, Ill., for Board of Education.

CAMPBELL, Chief Judge.

The instant action, which might best be described as a suit alleging the discriminatory denial of job opportunities in violation of the United States Constitution, was first presented on a motion for a temporary restraining order or in the alternative for a preliminary injunction.

By way of chronology I should here record that prior to accepting the task of deciding this case on its merits I attempted, unsuccessfully, in a pre-trial conference to have the attorneys for the respective parties reach an amicable settlement.

When settlement showed itself to be impossible, I immediately heard oral argument on the all important issue of jurisdiction. The excellent oral arguments of all counsel, buttressed by their equally fine supporting briefs, convinced me, first, of the unusual importance and significance

of this case from both a legal and a sociological perspective; second, of an apparent conflict between the equities of the case and what law there is relative to the issues; and thirdly, of the fact that for the most part this complaint, taken as a whole, presented a case of first impression, which should proceed at this time without further delay to do justice to all parties concerned.

In order better to study the issues, I required the additional benefit of knowledge of the facts underlying the complaint, facts which it was apparent defendants' counsel themselves did not agree upon in their oral arguments on the jurisdictional issue. I, therefore, denied the motions to dismiss without prejudice to their being renewed at the close of the evidence on the motion for a preliminary injunction.

I thereby reserved the jurisdictional issue with the factual issue until now.

After receiving evidence on the facts involved, hearing the most eloquent arguments of all counsel, and re-reading the excellent briefs previously submitted I now make the following findings of fact and conclusions of law.

The named plaintiffs, three young negroes, bring this case as a class action on behalf of themselves and all other negroes who are similarly situated. The defendants are identified as follows:

1. Joint Apprenticeship Committee of the Steel Workers of Chicago and International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 1, and Its Named Officers and Officials named in the complaint, which will be hereinafter referred to as the Joint Committee, or as the Committee.

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2. Iron Workers Bridge and Structural Union, Local No. 1, and Its Officers and Officials named in the complaint, which entity will hereinafter be referred to as the Union.
3. Paschen Contractors, Inc., a Delaware Corporation, and Peter Kiewit Sons Co., a Nebraska Corp., which will be hereinafter referred to jointly as The Contractor.
4. Bethlehem Steel Company, a Delaware corporation, which will hereinafter be referred to as Bethlehem.
5. Dominic Tesauro, Regional Administrator, General Services Administration, who will hereinafter be referred to either as Tesauro or the G.S.A.
6. Alvin A. Dost, Regional Director, Bureau of Apprenticeship and Training, U. S. Department of Labor, which hereinafter will be referred to as Dost or the Bureau.
7. Board of Education, City of Chicago, which will hereinafter be referred to as the Board of Education.

There is little dispute as to the facts, although there seems to be a grave question as to what findings they may justify. Thus, for present purposes I will merely outline the facts to the extent necessary to permit me to recite my findings thereon.

In October, 1962, GSA entered into a contract for the construction of a United States Courthouse and Office Building structure herein the City of Chicago with the defendant Contractor, who in turn sub-contracted with the defendant Bethlehem as to the steel work. These contracts included provisions which in effect require the Contractor and Sub-Contractor not to discriminate on the

basis of race, religion or ethnic background in the hiring of their employees. The contracts also specifically include by reference the terms of Presidential Order No. 10925 on Equal Employment Opportunities.

The defendant Union is the sole supplier of iron workers to Bethlehem on the instant job. Bethlehem by virtue of its collective bargaining contract must hire only those certified to it by the Union.

This Union has never had a negro among its membership. Moreover, the Joint Committee which supplies this Union with its new members through an apprenticeship program has never, until July of 1963, had a negro application on file. The Joint Committee is the sole supplier of apprentices to the Union.

To relieve what on its face appeared to be a patent policy of discrimination an initial attempt was made by government agencies to locate negro journeymen who were Union members. It is noted that this search was not confined to this area, and in fact, this search failed to produce so much as one negro within the ranks of the defendant Union. Having so failed, some six negro welders who had experience working on steel were suggested to the Union and/or to Bethlehem in the hope that some of them might be acceptable journeymen. These men were all found to be incompetent prospective journeymen, either on the basis of their age or lack of experience.

Next, the plaintiffs, the aforesaid three young negroes, after being tested as to aptitude, potential ability and suitability were encouraged by the same government officials to seek employment on this federal job as apprentice iron workers. In the latter part of June, 1963, they were interviewed by representatives of Bethlehem who found two

of the three, Todd and Hill, to be qualified. The evidence brought forth the fact that Bethlehem was and is of the belief that one of the specifically named plaintiffs, Michael Cochran, would not be a satisfactory employee. I need not and will not go into the reasons and merits prompting Bethlehem's position with reference to Cochran beyond concluding, which I do, that Bethlehem's decision that it did not want Cochran was not an act motivated or principled upon reasons of racial discrimination. Bethlehem did, however, express a willingness to hire Todd and Hill as apprentice iron workers subject to their being properly indentured and presented by the Union. This fact was made known by Bethlehem to the Union and to the Joint Committee. All three plaintiffs did, also during the latter part of June, 1963, fill out apprenticeship training applications with the Joint Committee. None of the three were or have been indentured and/or submitted to Bethlehem for employment.

To become a member of the Union through the apprenticeship program an applicant must first be permitted to fill out an application. That application must then be accepted by the Joint Committee, said acceptance coming only after the applicant has been examined by the Committee.

Conflict inheres in the testimony, the documentary evidence and the representations of counsel as to the method by which applicants are selected for indenture certification. Chronology of application is probably a criteria, assuming the Joint Committee desires it to be. But as a practical matter, I find that selection is wholly within the arbitrary discretion of the Joint Committee. In any event, I find that the actual operation of the instant program considered

in light of its results discriminates against negroes, more specifically against the rights of negroes to learn and earn a living in, the particular trade involved. I find that whatever apprenticeship list the Joint Committee does have represents a history of discrimination against negroes.

The defendant Contractor has had in its employ on the Federal Courthouse Building some 35 to 40% negro employees. All other unions working on the structure have negroes among their members, and who are actively employed. Contrastingly, the Union here has presently some 2,300 members none of whom are negro. Since 1952, there have been approximately 800 apprenticeships in the instant Joint Committee program, some 400 of which have graduated to become journeymen. None of these 800 were or are negroes. Bethlehem Steel at one time during peak employment, employed 114 journeymen iron workers on this government project and none were negroes.

Based upon rational and reasonable inferences I find that either negroes were refused application blanks by the Joint Committee, or if permitted to file such applications they were never acted upon. I find that the negro community as such knew of this policy of the Joint Committee and the Union and that because of the inherent and patent futility of such action sent few applicants in recent years to the Joint Committee or the Union.

To make my position clear, I should observe that the mere absence of members of the negro race on the roles of this specific Union or on the roles on that Union's apprenticeship list would not in and of itself be proof of discriminatory membership policies.

However, the evidence before me, including but not limited to the history and general polices of the Union and

the Joint Committee, manifest a definite policy and history of discrimination against those of the negro race. These facts present a clear picture not of racial segregation but of racial exclusion. The above cited facts and figures evidence a systematic policy on the part of the Union and the Joint Committee to exclude negroes solely on the basis of their race. *Yick Wo* v. *Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220.

It is obvious from a reading of the GSA correspondence in evidence and from the testimony of Mr. Tesauro that the GSA was not satisfied that the Joint Committee's selection of apprenticeships for indenturing in the past had been based strictly on a chronological membership list basis. Nor was the GSA satisfied that the Union's membership policy had been non-discriminatory. It is equally obvious that the GSA believed the Joint Committee to have discriminated against negro applicants and to be discriminating against these specific plaintiff negro applicants.

I think it also fair to state that GSA was of the belief that the Union in the past had discriminated against negroes relative to membership. On the basis of the same GSA files and the additional evidence presented to me, I find to be a fact the above suspicions and beliefs of the GSA. I find that the Joint Committee and the Union discriminated against negroes who sought admittance to the said Union.

The Joint Committee's apprenticeship program operates under the approval, certification, and with the continued assistance of the Bureau. The Joint Committee's apprenticeship program is presently registered by the Bureau, although no application list has ever been submitted to the Bureau. The Bureau has never sought to dis-certify the

Joint Committee's program, rather, on the other hand, the Bureau has on several occasions sent to the Joint Committee letters of commendation.

A full program of academic instruction is and has for some time been conducted as part of the apprenticeship program. Facilities and equipment of the Board of Education are used for this academic instruction. The three hour classes, which convene two nights per week, are taught by teachers employed and paid for by the Board of Education. Admission to these classes can come only upon approval by the Joint Committee. Of the 56 students presently enrolled, none are negroes.

[1] To reduce somewhat the necessary scope of my legal comments I wish here to indicate my own belief in the non-applicability and legal insufficiency of any contractual 3rd party beneficiary theory in relation to the instant action. Suffice it to say, I am of the opinion and legally conclude that the plaintiffs, either singularly or as a class, are not true "donee" or "creditor" beneficiaries, but rather, are at best "incidental" beneficiaries and as such have no contractual rights against any of the defendants. Even assuming for the sake of argument the existence of such rights they would at best be limited against those in privity, which in light of my foregoing factual findings would render such an action worthless. In light of my remarks on this subject during the trial, I doubt that this ruling comes as any great surprise to counsel. Those legal arguments presented by the various defendants, solely addressed to this *ex contractu* theory of recovery, therefore, will not be further discussed.

Now, as to plaintiffs' more general theory, wherein they allege that their rights as a class have been consti-

tutionally violated, I find much merit. Accordingly, I hereby once again deny, and this time on the merits, all pending motions to dismiss the instant complaint for want of jurisdiction and all motions to dismiss for failure to state a claim upon which relief can be granted.

[2] I find this action to be properly within the wording of Rule 23, subsection (a) (1), of the Federal Rules of Civil Procedure, as one involving a joint and common right; the right of negroes as a class to claim guarantees afforded them by the 5th and 14th Amendments to the Constitution of the United States. I conclude as a matter of law that the jurisdiction of this Court in the instant action can be and is properly invoked under Title 28 United States Code, Sections 1331, 1343, Sub-section (3), 1346, Sub-section (a) (2) and 1361, as well as Title 42, Sections 1981 and 1983.

I shall here briefly consider some of the legal arguments interposed by various defendants and in so doing indicate the reason or reasons why I have not seen fit to adopt them in the present case.

One of the strongest arguments, one which directly challenges my right even to consider this case in the first instant, is that presented by the United States Attorney on behalf of defendants Tesauro and Dost. The argument contends that this court lacks jurisdiction on the instant complaint inasmuch as the United States Attorney suggests, this action is really against the United States and in effect seeks an injunction against it. I am not unmindful of the fundamental pronouncements relative to the nature and extent of the law of sovereign immunity by the Supreme Court relative to injunction matters against the United States. *Larson* v. *Domestic and Foreign Commerce Corp.*,

337 U.S. 682, 69 S. Ct. 1457, 93 L. Ed. 1628, in 1949 and more recently in *Malone* v. *Bowdoin*, 369 U.S. 643, 647, 82 S. Ct. 980, 8 L. Ed. 2d 168.

In the words of the Supreme Court, "* * * the crucial question is whether the relief sought in a suit nominally addressed to the officer is relief against the sovereign". (*Larson*, page 687, of 337 U.S., page 1460 of 69 S. Ct., 93 L. Ed. 1628). However, the same Supreme Court has far from interpreted its above quoted language in a totally literal sense. Without attempting here to examine its motivations, a study of the Court's decisions relative to this law of sovereign immunity would clearly indicate precedent upon which to rest the present action against both Tesauro, as Regional Administrator of the General Services Administration and Dost, as Regional Director of the Department of Labor's Bureau of Apprenticeship and Training. Although not directly salient to the present action, I cite *Vitarelli* v. *Seaton*, 359 U.S. 535, 79 S. Ct. 968, 3 L. Ed. 2d 1012, wherein the Court ordered the Secretary of the Interior to reinstate a discharged federal employee to his government position; and in *Bell* v. *Hood*, 327 U.S. 678, 66 S. Ct. 773, 90 L. Ed. 939 the Court apparently acknowledged the existence of jurisdiction in the federal courts over complaints alleging that federal employees violated individual constitutional rights. And in the more recent *Malone* decision cited above, the most recent pronouncement by the Court on the instant subject, the Court by no means indicated any present desire to totally truncate the possibility of such actions, for in *Malone* the Court in essence stated that one can sue a government agency if there is a constitutional violation in the present exercise of the agency's power. I also cite 3 Davis, Administrative Law

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Section 27.08. Moreover, as I indicated at the time this argument was orally presented to me, I did not then nor do I now intend to enjoin the United States of America.

As to the argument by the Union and the Joint Committee that they cannot be sued as an entity under Illinois Law, I need only cite Rule 17, subsection (b) (1) of the Federal Rules of Civil Procedure which I believe applies to both the Union and the Joint Committee. The Rule permits a suit against such an unincorporated association "* * * in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, * * *". Moreover, the complaint specifically makes parties those who clearly are the responsible officers of both the Union and the Joint Committee. There is little doubt in my mind but that those necessary to enable me to enter judgment are properly before the court as party defendants.

[3] I find unjustifiable and of little merit the Union's contention that plaintiffs have failed to join an indispensable and necessary party, namely the some 148 men (actually the evidence indicated this figure now to be closer to some 90 men) whose names the Union contends appeared and appear on the apprenticeship list ahead of those of the plaintiffs specifically named in the caption of the complaint. In the first place this contention is based upon what the evidence and my factual findings have proved to be an inaccurate assertion and assumption, namely, that the Joint Committee in fact maintains or maintained a chronological list from which prospective applicants were called in order of their application. (On October 3, in oral argument before the court, counsel for the Joint Committee unequivocally stated that the selection of

applicants for actual indenturing involved discretionary selection based upon several criteria. This statement was borne out by the evidence.) Moreover, even assuming the facts to be contrary to the evidence and my expressed findings, as the Union's counsel suggested them to be, these 148, or however many we may now have, individuals could not be said to have such an interest in this controversy that a complete decision would be unjust and impossible without them as parties. I am of the opinion that this suit is neither directly or indirectly against them; if they feel otherwise I should make it clear that I am not now nor would I in the future have any intention to preclude their joinder in this action.

Parenthetically, I might observe that I would, were the issue properly before me, find little merit to any argument seeking to assert the alleged rights of persons whose names appeared preferentially on lists which were in their entirety the result of a discriminatory practice. Once having come to the point of finding a history of discrimination, as I have done here, it would become imperative upon me sitting in Equity, to somehow off-set the effect of previous discrimination and not to protect its by-product. To this extent, and in this relation at this juncture I should observe that the anecdote of counsel for Bethlehem illustrating the extremes to which an Englishman would go, and apparently with impunity, to protect his queue rights, deserves comment.

Assuming that I could even partially accept the fact that one standing to the rear of a line should not, for fear of death, attempt to advance in the line ahead of others who preceded him, still I would now unanalogize the anecdote by interposing the additional fact, obvious

from the evidence in the instant case, that the person standing in the rear of the line is and was there because others would not permit him to advance to the line until it already had been formed.

Apparently as an afterthought, since it was not mentioned at the time the initial motions to dismiss were argued, counsel for the Union in his final argument insisted that jurisdiction over the instant complaint has been pre-empted by the National Labor Relations Board under Sections 157 and 158, sub-section (b) (2) of Title 29 of the United States Code.

In support of this argument counsel cited cases which he inferred to the court were on point. Not only have I, upon a reading of the cases cited, found them, in my opinion, to be inapposite, but if any thoughts relative to the instant cases are to be distilled therefrom it is that the method herein employed by the plaintiffs is the only one available to them.

Indeed, counsel's legal argument can be dispelled without even referring to the cases, which he cites. Section 157 concerns itself with the rights of employees to form, join and assist labor unions and bargain collectively with their employers. Needless to say, this section is addressed to employers of employees and has no factual relationship to the instant complaint. Section 158 generally concerns itself with unfair labor practices. Sub-section (b) (1) provides:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not im-

pair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;"

This sub-section addresses itself only to unfair labor practices by a Union—unfair labor practices against employees. The statute in no way proscribes the discriminatory conduct alleged and proved in this case. For that matter I might gratuitously comment that if, as suggested by the Union's attorney, this action were initiated before the National Labor Relations Board, the same Union and possibly through the same attorney would undoubtedly be the first to defend on the ground that the complainants were not employees or members of the Union and as such were entitled to no rights under the Act which it cites here. It is obvious to me that a union's responsibility under this Act does not extend beyond the membership of its own union and the non-union employees who are members of the same bargaining unit. The statute expressly exempts from its provisions, even assuming *arguendo* its applicability to the non-employee plaintiffs in the instant case, the right of a union to determine its membership. It is that which is specifically so exempted from that act which is the issue here.

In this regard I note the language and the holding of the Supreme Court in *Brotherhood of Railroad Trainman* v. *Howard*, 343 U.S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283. The complaint there as here was brought against a union by non-members (but employees) alleged discrimination in the denial of job opportunities. The Court specifically

considered and expressly rejected the union's contention that it was protected by the Norris-LaGuardia Act. It is interesting to note that the Court considered and rejected still another argument by the union; that its actions were those of private parties and as such not subject to the constitutional proscriptions. The Court there did have before it what it held to be a statutory duty arising under the provisions of the Railway Labor Act (45 U.S.C. §151 et seq.) However, in justifying its action in enjoining continued discrimination by the union the Court cited two cases, one of which was *Shelley* v. *Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161. Notably, there was no such statute in *Shelley*.

At the onset of these proceedings I was somewhat impressed by statements made by plaintiffs' counsel in answer to the defendants' respective motions to dismiss. If plaintiffs' counsel will permit me the right to somewhat paraphrase, and I might add shorten, his comments, they were that taken as a whole the arguments of defendants' counsel seemed to "add up to" and agree that: the plaintiffs had some legal rights which were violated; that whatever these rights are they have something to do with the Government of the United States; however, the courts of the United States are the wrong place to bring an action seeking to redress the deprivation of these rights; and in any event, the wording of the present complaint shows it to be an improper vehicle upon which to proceed.

[4] One of the defendants' counsel in his closing argument summarized the action as being, "A good cause in a bad case." The above reasoning is not completely without legal support. However, I find justification in the

basic and fundamental axiom of equity *"Ubi Jus Ibi Remedium"*—where there is a right there should be a remedy.

Fortunately we have come a long way since Judge Ferguson found little merit to a demurrer filed to a criminal information by a defendant named Plessy who was convicted of violating a Louisiana statute providing for separate transportation accommodations. I refer to *Plessy* v. *Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, decided in 1896.

[5] Since *Plessy* the Supreme Court has given a more literal and in my opinion a more just and equitable interpretation to the Equal Protection Clause contained in the 14th Amendment. That a state, or an individual, acting under color of state authority, cannot unreasonably discriminate aganist a race, religious or ethnic group, in the granting of job opportunities can no longer be questioned. Furthermore, the 5th Amendment's Due Process Clause, notwithstanding some argument and suggestions to the contrary by counsel in the instant case, has now unequivocally been determined by the Supreme Court to either by inference adopt literally or at the very least legally encompass the Equal Protection Clause of the 14th Amendment. I cite *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884. To hold otherwise would of necessity imply an anomalous circumstance which would in effect permit the Federal Government (which would include the District of Columbia) to violate rights made sacrosanct from similar invasions by the states. A most recent statement by the Supreme Court is most relevant not only legally but factually to the instant case. In *Colorado Anti-Discrimination Commission* v. *Continental*

Air Lines, 372 U.S. 714, at page 721, 83 S. Ct. 1022, at page 1025, 10 L. Ed. 2d 84 the Court stated:

> "But under our more recent decisions [in addition to *Bolling* v. *Sharpe* the Court cited *Brown* v. *Board of Education of Topeka*, 347 U.S. 483, 74 S. Ct. 686 (1954); *Bailey* v. *Patterson*, 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512 (1962)] any state or federal law [says the Supreme Court] requiring applicants for any job to be turned away because of their color would be invalid under the Due Process Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment."

It might well be argued, and indeed it has been, that on the basis of the evidence before me neither the Federal Government, through its agency defendants, nor the State of Illinois, through the Board of Education, actively violated the constitutional rights of the plaintiffs. There is in my mind little question and I have so found it to be a fact, that the Union and the Joint Committee invidiously discriminated against the plaintiffs. However, I am not unmindful that the 5th and 14th Amendment do not protect against merely private conduct. *U. S.* v. *Harris*, 106 U.S. 629, 1 S. Ct. 601, 27 L. Ed. 290 and *U. S.* v. *Cruikshank*, 92 U.S. 542, 23 L. Ed. 588.

This denial of "public body" action is not novel, and if in effect it is substantiated by the evidence, which in my opinion it was not in the instant case, it would state a defense to actions such as this. We must look to the relationship between the constitutional violator on the one hand and the government, be it federal or state, on the other. It should be remembered that public bodies may and of necessity do act through a variety of agencies.

[6] The actions of these agencies are none the less the actions of their creators. And that the actions of all

such agencies, be they legislative, executive or judicial, are attributable to the public body and can be the cause of constitutional violations cannot be questioned. *State of Virginia* v. *Rives*, 100 U.S. 313, 25 L. Ed. 667, *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107.

The discrimination in the instant case could not have been accomplished without the aid and assistance of the three public agencies defendants. The character of the actions and conduct of these defendant agencies cannot be attenuated by the woefully repetitious argument that they did not directly and solely discriminate against the plaintiffs. It is obvious from the evidence that their actions are wholly inconsistent with the constitutional guarantees they are required to honor. I now legally conclude from the instant facts it is not only clearly established that such a relationship exists but in the language of the Supreme Court a relationship involving the Federal Government and the State, through their respective agencies, to a "significant extent". *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45.

These various relationships deserve comment. Although both government agencies, GSA and the Bureau, are related significantly to the discriminatory practices, their attitudes and reaction to the instant situation were not necessarily similar. On the one hand GSA through the defendant Tesauro acknowledged the existence of this undesirable situation, one which by continued erection of the Federal Courthouse structure it was unwillingly fostering and becoming an integral part of. The evidence clearly shows that Tesauro earnestly attempted to adopt and foster and eventually make a reality the policies

of the President of the United States set forth in his Executive Order No. 10925 on Equal Employment Opportunities, which was made a part of the contracts in the instant case. The tools which he, Tesauro, was given to accomplish this task proved glaringly insufficient. In this regard the evidence shows his having notified the President's Committee on Equal Employment of the discriminatory practices. At best his remedial power extended only to the contractor and sub-contractors and then only to a very limited degree. Needless to say he could not require them, or more specifically in this instance Bethlehem Steel, to hire non-union help. Such a suggestion would require Bethlehem to breach their collective bargaining contract with the Union. His suggestions, recommendations and indeed his accomplishments, blemished only by this Union and Joint Committee, constituted a realistic effort to compensate for past and to avoid future charges and incidents of discrimination. Action such as this by responsible government officials could do much to avoid many of the incidents reported all too frequently in the press these days. The defendant Union and the Joint Committee on the other hand have done much to stultify his work. All other unions and apprenticeship committees on this project have fully and unreservedly cooperated with Mr. T[illegible]aro. The halls of justice which they are now helping to build will serve as a constant reminder to others that our Constitutional expressions of equality are more than mere abstract terms. The defendant Union and Joint Committee by their actions have in my opinion attempted to make a mockery out of the public spirit of these other unions who yielded to the efforts of Tesauro and others like him. Notably, this is the only Union and

Joint Committee not to adhere to the policies set out in the Presidential Executive Order. They deliberately disobeyed the Presidential Order. True, the law imposes no criminal penalty or sanction for such action. However, sitting as a court of Equity I cannot help but note and disapprove the smug policy of this one Union of accepting the sweet and avoiding the bitter. In accepting work on this contract, they together with all other employees, accepted the benefits to be derived therefrom, however, they alone refused to comply with what they thought to be the repugnant part of the Presidential Order.

Basic Equity and simple justice to the unions which have so laudably cooperated compels mandatory action against this Union which has so selfishly and stubbornly refused even nominal or token cooperation.

My comments and observations on the activities and conduct of the defendant Tesauro are offered also to distinguish him and his agency's actions from those of the other Federal government agency defendant, as well as the nature and the background of some of the actions of the Union and its Joint Committee.

I have by the last few paragraphs intended to some extent to praise defendant Tesauro and the GSA. Unfortunately, I cannot say the same for the defendant Dost, who in my opinion sat idly by and through his course of non-action fed and encouraged the discriminators. With the obvious exception of The Department of Labor officers Cicero and Harris, who by their actions deserve praise similar to that bestowed on Tesauro, the evidence before me indicates at best disconcern by the Bureau as to this situation and situations similar to it. The Bureau was also the recipient of equally non-discriminatory plati-

tudes from no less a personage than the Secretary of Labor. However, the Bureau files, that is, those which they could locate, and the testimony of Dost indicate an overall apathy to the problem, in my opinion. Ironically enough the remedial tools at its hands were and are far superior to those available to Tesauro. Could not the Joint Committee's recognition have been retracted by the Bureau? Could not further assistance to the Joint Committee and the Union have been denied, by the Bureau?

In any event and notwithstanding what appears to me to be different motives and reaction to the situation, I must and do find from the evidence that both Federal agencies directly and significantly made possible and aided in the perpetuation of the Joint Committee and Unions' discriminatory policies. The GSA by making it possible for the Union and Joint Committee to function on the Government Building project, the violent alternative of course, unfortunately would be to stop construction; and the Bureau by extending direct aid and assistance and recognition and in effect giving its blessing to the practices of the Joint Committee.

So also the Chicago Board of Education, notwithstanding its motivations and actual desires, neither of which are manifest by the evidence in the instant case but which I certainly presume to be laudable and public spirited. Nevertheless, the defendant, the Board of Education, did make available its facilities, its equipment and its teachers (who additionally I should observe were selected with the aid of the Joint Committee) to the furtherance of what it knew or should have known was an invidiously discriminatory scheme.

The Board of Education acted under color of sate authority and its actions were and are "involved to a signifi-

cant extent" with the overall discriminatory plan. Although possibly not directly related from a point of legal significance, I cannot help but note the extent to which our Supreme Court has gone to protect the Constitutional guarantee of freedom of religion from school board action. In *People of the State of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71*, Champaign County, Illinois, reported at 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, the Court declared unconstitutional the use of school buildings and school time for the utilization of religious education. Analogizing the facts in *McCollum* with those in the instant case for the purpose of making equity evaluation one cannot help but note the preponderance of the equities in the case now before me. For here the utilization of a tax supported system is in aid of racial discrimination, not merely the teaching of religious tenets which are in and of themselves far from being morally wrong.

[7] I reiterate, discriminatory practices of the Union and the Joint Committee absent the facts of public body consent, assistance or support would not of themselves violate the 5th or 14th Amendments. The privilege of membership in a labor union is of no concern in and of itself to the courts. Moreover, membership in a union in and of itself cannot properly be made a subject of concern of this court unless as we have here, it is an essential requirement and qualification to the plaintiffs realizing rights owed them by the Federal and State governments.

[8] The Union and the Joint Committee are, on the basis of the facts here, an integral part of a Federal and State project. A private citizen or organization, to the extent that their activities remain entirely private and unrelated and non-dependant upon the sovereign, cannot be charged wtih denial of equal protection of the law. How-

ever, we have more. The Federal government through two of its agencies and the State through one of its agencies, is at the very least passively assisting, aiding and making it possible for the defendant Union and Joint Committee to realize and perpetuate their discriminatory practices. The defendant agencies in practice and in effect are permitting the Union and Joint Committee to practice racial discrimination and by so doing if not directly at least indirectly are denying plaintiffs their constitutional rights.

If I might extend and apply to the instant facts some of the language and reasoning of the Supreme Court I think it fair to state, that in the wording of *Smith* v. *Allright*, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, being indentured into the Union is an "essential qualification" which must be met by one seeking employment as an iron worker on the Federal Courthouse Building. The landmark, Civil Rights Cases 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835, holding that the actions of individuals, as individuals, unsupported by governmental authority (the Court was there concerned with State action) cannot constitute a violation of one's constitutional rights, used the following language: " * * * if not sanctioned in some way by the State, or done under State authority * * *". I find on the evidence before me that the three governmental agency defendants have here sanctioned the conduct of the Union and the Joint Committee, within the language of that opinion.

It is clear on the basis of the evidence and the law of the case that the defendant Contractor, Paschen-Kiewit, has not been guilty of any act or acts of discriminatory conduct against either the named plaintiffs or for that matter any un-named members of the plaintiffs' class. Accordingly, I now award judgment to and dismiss the defendant Contractor.

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It is equally clear on the basis of the evidence and the law of the case that the defendant Bethlehem has not been guilty of any act or acts of discriminatory conduct against either the named plaintiffs or for that matter any unnamed members of the plaintiffs' class. However, for the purpose of and only for the purpose of rendering a complete and total decree I cannot dismiss but must retain jurisdiction over Bethlehem Steel.

In accordance with the views here expressed I must and do of necessity retain jurisdiction over the three public agency defendants, GSA, the Bureau and the Board of Education.

[9] Accordingly, and as to the remaining defendants not heretofore dismissed, I find the issues for the plaintiffs and I hereby order adjudged and decreed that the defendants Joint Apprenticeship Committee of the Steel Workers of Chicago and International Association of Bridge Structural and Ornamental Iron Workers Local Union No. 1, Sidney I. Cole, Chairman, Frank D. Rieland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Standford Jacobs and Edmund D. Flood, Apprentice Co-Ordinator, and each of them, their agents, servants, employees and attorneys and all persons in active concert and participation with them are hereby jointly and severally commanded forthwith to certify for indenture as apprentices the plaintiffs Ronald L. Todd and James Hill and to thereupon immediately tender them for employment as apprenticeship Ironworkers to Bethlehem Steel Company, and further, they are ordered hereinafter to cease and desist from continued and further discrimination against negro applicants and applications.

(Appendix A)

It is hereby further ordered, adjudged and decreed that the defendants International Association of Bridge Structural and Ornamental Iron Workers, Local Union No. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator, their agents, servants, employees and attorneys and all persons in active concert and participation with them are hereby individually and collectively, jointly and severally commanded forthwith to admit the said plaintiffs Ronald L. Todd and James Hill to membership in the said Union as apprentices and they and each of them are hereby further restrained from interfering in any way directly or indirectly with the full and peaceful enjoyment by the said plaintiffs of all of the rights, privileges and profits lawfully appertaining to such membership, and further, they are hereinafter ordered to cease and desist from continued and further discrimination against negro applicants for membership.

It is hereby further ordered, adjudged and decreed that the defendant Bethlehem Steel Company employ as Apprentice Iron Workers the said Todd and Hill upon their certification and admission as aforesaid.

It is hereby further ordered that the costs of this proceeding be taxed against the Joint Apprenticeship Committee and Iron Workers Bridge and Structural Union, Local No. 1.

Counsel for plaintiffs is hereby directed to prepare and submit to the court within five days hereof, detailed Findings of Fact, Conclusions of Law and a formal Decree of Preliminary Injunction in conformity with the views here expressed.

Judgment accordingly.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
for the Seventh Circuit

May 26, 1964

Before HASTINGS, *Chief Judge*, and KNOCH and KILEY, *Circuit Judges*.

HASTINGS, *Chief Judge*. These consolidated appeals are presently before us on three motions to remand this cause to the district court to dismiss alleging that the issues raised have become moot. We feel constrained to hear these motions in advance of the case on the merits because of the critical issues raised therein.

On October 26, 1962, defendants Paschen Contractors, Inc. and Peter Kiewit Sons' Co. (Contractor) entered into Contract No. GS-5PC-1178 to construct a United States Court House and Federal Office Building in Chicago, Illinois, to be paid for from and with public funds of the United States.

The construction of such building was commenced shortly thereafter and has continued in progress down to the present time.

Contractor entered into a subcontract with defendant Bethlehem Steel Company (Bethlehem) for the fabrication and erection of structural steel on such project. Bethlehem was engaged in such work in 1963 during the period when the events complained of herein took place.

On October 23, 1963, Bethlehem completed all work on the project, including steel erection, called for in its sub-

contract. It has had no employees working at the construction site since said date of completion.

Iron Workers Bridge and Structural Union, Local No. 1 and Iron Workers District Council of Chicago & Vicinity, with certain of their respective officers and representatives, defendants (collectively referred to as Union), had a collective bargaining agreement with Bethlehem whereby it was the sole supplier of iron workers to Bethlehem on said project.

Union is a voluntary unincorporated association of 2600 or more persons, including apprentices, engaged in working as journeymen iron workers or apprentice iron workers in the Chicago area.

Contractor's Contract No. GS-5PC-1178 and Bethlehem's subcontract both specifically included by reference the terms of Presidential Executive Order No. 10925 of March 6, 1961. This Executive Order, *inter alia*, is generally directed against racial or other discrimination in the performance of governmental contracts such as the construction project under present consideration.

One of the provisions of Contract No. GS-5PC-1178 was that apprentices "will be permitted to work only under a bona fide apprenticeship program" registered and recognized as therein set out.

At all times material herein, there was in full force and effect in Illinois such a bona fide apprenticeship program for iron workers. Joint Apprenticeship Committee of the Steel Workers of Chicago and International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 1 and its officers and members, defendants (collectively referred to as Joint Committee), was responsible for the administration of the iron worker apprenticeship standards in the Chicago area.

(Appendix B)

Joint Committee was composed of three representatives of Chicago Steel Erectors and three representatives of Union, selected by their respective organizations. Defendant Edmund D. Flood is the Apprentice Co-Ordinator of the Joint Committee.

The standards of the iron worker apprenticeship program had proper approval by the United States Department of Labor, of which defendant Alvin Dost was Regional Director.

At all times material herein, defendant Dominic Tesauro was Regional Administrator, General Services Administration (GSA), and was charged with the enforcement and administration of the construction contract for the United States.

The Board of Education of tne City of Chicago (Board of Education), defendant, is a municipal corporation of Illinois operating a public school system in the City of Chicago. Board of Education is a party solely because of its participation in the apprenticeship training program.

In accordance with the requirements of Presidential Executive Order No. 10925, Contractor reported to GSA that on March 25, 1963 there were no Negroes, either journeymen or apprentices, in the Union. Bethlehem reported to GSA on May 15, 1963 that as of April 14, 1963, it had a total of 101 employees on the project site of whom 79 were structural iron workers, 6 of these being apprentices, and that none of such employees was a Negro. Bethlehem reported that its peak employment would probably be reached on about May 22, 1963. Later, Bethlehem reported to GSA that as of June 16, 1963, it had 146 employees on the project site of whom 128 were structural iron workers, 8 of these being apprentices, and that none was a Negro.

(Appendix B)

On May 23, 1963, on demand by GSA, Bethlehem requested of Union written assurances that Union would comply with the non-discrimination policies of Executive Order No. 10925. Union did not provide any such statement. At about the same time, Union informed Tesauro, Bethlehem and Dost that it would not accept Negro structural iron workers or apprentices for work on this construction project.

Ronald L. Todd, Michael Cochran and James Hill, plaintiffs, were male Negroes ranging in age from 18 to 23 years. On about June 7, 1963, plaintiffs were referred to Contractor by the Illinois State Employment Service and the Department of Labor as applicants for employment as iron worker apprentices training, after having been examined and found to be possessed of both aptitude for and interest in the trade.

On about June 24, 1963, Bethlehem examined plaintiffs and found them to be qualified to be hired as apprentice iron workers. On the same date, each of plaintiffs properly executed and filed an application for indenture as an apprentice iron worker with Joint Committee

On about June 28, 1963, Bethlehem stated it was in a position to give two of plaintiffs immediate employment on the construction project if they were indentured by Joint Committee and requested Joint Committee to indenture two of plaintiffs. None of plaintiffs was ever examined by Joint Committee or indentured or submitted to Bethlehem for employment.

Beginning about July 1, 1963, Tesauro began a series of unsuccessful attempts to induce Joint Committee to indenture two of the three plaintiffs. Bethlehem unsuccessfully renewed its request to Joint Committee on July 12, 1963.

(Appendix B)

By letter of July 15, 1963, Joint Committee again denied the request and offered to supply any additional apprentices required from among the other applicants in its files. At this time, Joint Committee claimed to have on file 150 applicants who had applied before plaintiffs. Many of these were found to be unavailable when subsequently called.

On about July 19, 1963, Tesauro referred the whole matter to the President's Committee on Equal Job Opportunity. On September 23, 1963, that Committee reported to Tesauro that it would take no action.

As of September, 1963, there were 853 persons employed on the construction site; of these 171, or approximately 20%, were Negroes. Of these 171 Negro employees, 43 were journeymen, 11 were apprentices and the remainder were laborers. Of the sixteen crafts then working on the construction site, only Union and Joint Committee were not represented by Negro employees.

With the foregoing factual situation present, on September 26, 1963, plaintiffs filed their complaint against defendants in the district court. The complaint alleged in substance:

(1) Provisions of Contract No. GS-5PC-1178.

(2) Provisions of the iron workers apprenticeship program.

(3) That plaintiffs were native born citizens and Negroes.

(4) That plaintiffs and all persons who constitute the class to which they belong were eligible to qualify for the apprenticeship training program; that they made application therefor and were denied certification solely because of their race and color.

(Appendix B)

(5) That in April, 1963 plaintiffs sought employment on the construction project from Bethlehem, which was denied because they were Negroes.

(6) That plaintiffs brought the action on behalf of themselves and the class to which they belong and have failed to secure enforcement of their rights to employment under the terms of Contract No. GS-5PC-1178.

(7) Provisions of Executive Order No. 10925.

Plaintiffs prayed for the following relief in their complaint:

"Wherefore, the plaintiffs respectfully pray this Court to enjoin the defendants and each of them from proceeding with the performance of Contract No. GS-5PC-1178 unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice or in the alternative that this Court enjoin and restrain the defendants and each of them from making or receiving any payments on account of such contract unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice."

The trial court held an extended hearing on the issue of a preliminary injunction. Some of the defendants introduced no evidence. The evidence considered by the trial court related primarily to Contract No. GS-5PC-1178 and the failure of Bethlehem to employ plaintiffs on that construction project.

On October 11, 1963, Bethlehem filed its motion for judgment at the close of all evidence, in part on the ground that the issues were moot since no more apprentice iron workers would be employed on the job site in question, its subcontract being substantially completed at that time.

(Appendix B)

On October 16, 1963, the district court rendered an able, extensive and comprehensive opinion. This is reported in *Todd* v. *Joint Apprenticeship Com. of Steel Wkrs. of Chicago*, N.D. Ill. E.D., 223 F. Supp. 12, and reference thereto is now made.

On October 22, 1963, respective counsel of the parties appeared before the trial court for the purpose of setting bond, the entry of formal findings of fact and conclusions of law and a formal decree. At that time, Bethlehem advised the court that "all work of Bethlehem on the site in question will be concluded tomorrow." The court then stated, "Very well, the record may so show."

On October 25, 1963, Bethlehem filed affidavits with the trial court that all work in fulfillment of its subcontract on the construction site was completed on October 23, 1963. No one disputed that such was the fact.

On November 8, 1963, the trial court filed its comprehensive findings of fact, conclusions of law and draft of preliminary injunction and adopted them as its own and ordered them entered *nunc pro tunc* as of October 16, 1963.

In sum, the findings recited the factual history of the case; that there had been no discrimination against plaintiffs by Contractor or Bethlehem; that there had been racial discrimination against plaintiffs by Union and Joint Committee; and that Bethlehem's rejection of plaintiff Michael Cochran because of his lack of qualifications was not discriminatorily motivated.

The trial court concluded, *inter alia*, that this suit was properly brought as a class action and that unless restrained Union and Joint Committee would continue their discriminatory practices against plaintiffs and their class;

that plaintiffs Todd and Hill were entitled to a preliminary injunction requiring Bethlehem to employ them as apprenticeship iron workers when properly certified by Union and Joint Committee.

A decree of preliminary injunction was entered accordingly.

Our study of the record convinces us that plaintiffs, by this action, sought to enjoin defendants from proceeding with the performance of Contract No. GS-5PC-1178 unless and until they were regularly employed as iron worker apprentices by Bethlehem on this construction site; or, in the alternative, restraining further payments to or by Contractor and Bethlehem until such employment was granted.

Bethlehem completed all work on its subcontract on October 23, 1963. At the time the preliminary injunction was entered on November 8, 1963, even though *nunc pro tunc* as of October 16, 1963, the matter in controversy had become moot. Bethlehem had no other steel erection activities in the Chicago area.

Plaintiffs[1] contend that the matter should now go back to the trial court for further hearing on a permanent injunction, including the issue of discrimination as it may relate to other construction contracts not now under consideration. This would require the determination of an abstract question. This we cannot do. The subject matter of the litigation is no longer an actual controversy. The time for determination of the questions involved in this action has passed. No relief within the scope of the complaint could now be granted. *Johnson-Kennedy Radio Corp.* v. *Chicago Bears F. Club*, 7 Cir., 97 F. 2d 223 (1938).

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[1]Plaintiff Michael Cochran did not join in this appeal.

See also *Bus Employees* v. *Wisconsin Board*, 340 U.S. 416 (1951).

While we hold no brief for the character of discrimination charged herein and found by the district court, we do not reach the question of the validity of the trial court's findings and conclusions and its judgment and decree based thereon. In the instant case, we have before us merely a temporary injunction applicable only to the specific construction project to which it is addressed.

Further, we do not decide here whether the district court had authority to apply an injunction retroactively by the issuance of a *nunc pro tunc* order.

We follow the established practice of the Supreme Court that when an issue or controversy becomes moot prior to or during an appeal that all prior orders shall be vacated and the cause remanded with instructions to dismiss. *Railroad Trainmen* v. *Chicago & I. M. R. Co.*, 375 U.S. 18 (1963);[2] *Davis* v. *Soja*, 374 U.S. 495 (1963).[3]

The judgment and decree of the United States District Court for the Northern District of Illinois entered November 8, 1963, *nunc pro tunc* as of October 16, 1963, are vacated and this case is remanded to such court with directions to dismiss the complaint as to all defendants as moot.

JUDGMENT VACATED AND CASE REMANDED WITH INSTRUCTIONS.

A true Copy:

Teste: .....

Clerk of the United States Court of Appeals for the Seventh Circuit.

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[2]Reported below: 315 F. 2d 771 (7 Cir.).
[3]Reported below: 303 F. 2d 601 (7 Cir.).

APPENDIX C

CONSTITUTIONAL PROVISIONS INVOLVED.

Fifth Amendment, United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX D

STATUTES INVOLVED.

28 U.S.C., § 1331:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

28 U.S.C., § 1343(3):

"To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

28 U.S.C., § 1346(a)(2):

"The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

28 U.S.C., § 1361:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to com-

pel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

29 U.S.C., § 157:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

29 U.S.C., § 158:

"(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employ-

ment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that mem-

bership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his em-

ployees subject to the provisions of section 159(a) of this title;

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board

determining the bargaining representative for employees performing such work: *Provided,* That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

(Appendix D)

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the

State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)-(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158-160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer."

(Appendix D)

42 U.S.C., § 1981:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

42 U.S.C., § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

APPENDIX E

FEDERAL RULES INVOLVED.

Rule 17(b), Federal Rules of Civil Procedure:

"(b) *Capacity to Sue or Be Sued.* The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C., §§ 754 and 959(a)."

Rule 23(a)(3), Federal Rules of Civil Procedure:

"(a) *Representation.* If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought."

APPENDIX F

EQUAL EMPLOYMENT OPPORTUNITY.

No. 10925

March 8, 1961, 26 F.R. 1977
Establishing The President's Committee On Equal Employment Opportunity

Whereas discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States; and

Whereas it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts; and

Whereas it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and

Whereas it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; and

Whereas a review and analysis of existing Executive orders, practices, and government agency procedures relating to government employment and compliance with existing non-discrimination contract provisions reveal an urgent need for expansion and strengthening of efforts to promote full equality of employment opportunity; and

Whereas a single governmental committee should be

charged with responsibility for accomplishing these objectives:

Now, Therefore, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I—Establishment Of The President's Committee On Equal Employment Opportunity

Section 101. There is hereby established the President's Committee on Equal Employment Opportunity.

Sec. 102. The Committee shall be composed as follows:

(a) The Vice President of the United States, who is hereby designated Chairman of the Committee and who shall preside at meetings of the Committee.

(b) The Secretary of Labor, who is hereby designated Vice Chairman of the Committee and who shall act as Chairman in the absence of the Chairman. The Vice Chairman shall have general supervision and direction of the work of the Committee and of the execution and implementation of the policies and purposes of this order.

(c) The Chairman of the Atomic Energy Commission, the Secretary of Commerce, the Attorney General, the Secretary of Defense, the Secretaries of the Army, Navy and Air Force, the Administrator of General Services, the Chairman of the Civil Service Commission, and the Administrator of the National Aeronautics and Space Administration. Each such member may designate an alternate to represent him in his absence.

(d) Such other members as the President may from time to time appoint.

(e) An Executive Vice Chairman, designated by the President, who shall be ex officio a member of the Com-

mittee. The Executive Vice Chairman shall assist the Chairman, the Vice Chairman and the Committee. Between meetings of the Committee he shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee pursuant to its rules, delegations, and other directives. Final action in individual cases or classes of cases may be taken and final orders may be entered on behalf of the Committee by the Executive Vice Chairman when the Committee so authorizes.

Sec. 103. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules and regulations. It shall (a) consider and adopt rules and regulations to govern its proceedings; (b) provide generally for the procedures and policies to implement this order; (c) consider reports as to progress under this order; (d) consider and act, where necessary or appropriate, upon matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. Such reports shall be made at least once annually and shall include specific references to the actions taken and results achieved by each department and agency. The Chairman may appoint sub-committees to make special studies on a continuing basis.

Part II—Nondiscrimination In Government Employment

Section 201. The President's Committee on Equal Employment Opportunity established by this order is directed immediately to scrutinize and study employment practices of the Government of the United States, and to consider and recommend additional affirmative steps which

should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Government.

Sec. 202. All executive departments and agencies are directed to initiate forthwith studies of current government employment practices within their responsibility. The studies shall be in such form as the Committee may prescribe and shall include statistics on current employment patterns, a review of current procedures, and the recommendation of positive measures for the elimination of any discrimination, direct or indirect, which now exists. Reports and recommendations shall be submitted to the Executive Vice Chairman of the Committee no later than sixty days from the effective date of this order, and the Committee, after considering such reports and recommendations, shall report to the President on the current situation and recommend positive measures to accomplish the objectives of this order.

Sec. 203. The policy expressed in Executive Order No. 10590 of January 18, 1955 (20 F.R. 409),[6] with respect to the exclusion and prohibition of discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin is hereby reaffirmed.

Sec. 204. The President's Committee on Government Employment Policy, established by Executive Order No. 10590 of January 18, 1955 (20 F.R. 409), as amended by Executive Order No. 10722 of August 5, 1957 (22 F.R. 6287),[7] is hereby abolished, and the powers, functions,

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[6] 5 U.S.C.A. § 631 note.

[7] 1957 U.S. Code Cong. & Adm. News, p. 924.

and duties of that Committee are hereby transferred to, and henceforth shall be vested in, and exercised by, the President's Committee on Equal Employment Opportunity in addition to the powers conferred by this order.

Part III—Obligation Of Government Contractors And Subcontractors

Subpart A—Contractor's Agreements

Section 301. Except in contracts exempted in accordance with section 303 of this order, all government contracting agencies shall include in every government contract hereafter entered into the following provisions:

"In connection with the performance of work under this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the

contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

"(5) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked

as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

"(7) The contractor will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Sec. 302. (a) Each contractor having a contract containing the provisions prescribed in section 301 shall file, and shall cause each of its subcontractors to file, Compliance Reports with the contracting agency, which will be subject to review by the Committee upon its request. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form as the Committee may prescribe.

(Appendix F)

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or other representative of workers, the Compliance Report shall include such information as to the labor union's or other representative's practices and policies affecting compliance as the Committee may prescribe: *Provided,* that to the extent such information is within the exclusive possession of a labor union or other workers' representative and the labor union or representative shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Committee may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent of any labor union or other workers' representative with which the bidder or prospective contractor deals, together with supporting information, to the effect that the said labor union's or representative's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or representative either will affirmatively cooperate, within the limits of

his legal and contractual authority, in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or representative shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement.

Sec. 303. The Committee may, when it deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including the provisions of section 301 of this order in any specific contract, subcontract, or purchase order. The Committee may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (a) where work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (b) for standard commercial supplies or raw materials; or (c) involving less than specified amounts of money or specified numbers of workers.

Subpart B—Labor Unions And Representatives Of Workers

Sec. 304. The Committee shall use its best efforts, directly and through contracting agencies, contractors, state and local officials and public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting agency or other representative of workers who is or may be engaged in work under government contracts to cooperate with, and to comply in the implementation of, the purposes of this order.

(Appendix F)

Sec. 305. The Committee may, to effectuate the purposes of section 304 of this order, hold hearings, public or private, with respect to the practices and policies of any such labor organization. It shall from time to time submit special reports to the President concerning discriminatory practices and policies of any such labor organization, and may recommend remedial action if, in its judgment, such action is necessary or appropriate. It may also notify any Federal, state, or local agency of its conclusions and recommendations with respect to any such labor organization which in its judgment has failed to cooperate with the Committee, contracting agencies, contractors, or subcontractors in carrying out the purposes of this order.

Subpart C—Powers And Duties Of The President's Committee On Equal Employment Opportunity And Of Contracting Agencies

Sec. 306. The Committee shall adopt such rules and regulations and issue such orders as it deems necessary and appropriate to achieve the purposes of this order, including the purposes of Part II hereof relating to discrimination in government employment.

Sec. 307. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Committee with respect to contracts entered into by such agency or its contractors, or affecting its own employment practices. All contracting agencies shall comply with the Committee's rules in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Executive order and of the rules, regula-

tions, and orders of the Committee pursuant hereto. They are directed to cooperate with the Committee, and to furnish the Committee such information and assistance as it may require in the performance of its functions under this order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this order by conference, conciliation, mediation, or persuasion.

Sec. 308. The Committee is authorized to delegate to any officer, agency, or employee in the executive branch of the Government any function of the Committee under this order, except the authority to promulgate rules and regulations of a general nature.

Sec. 309. (a) The Committee may itself investigate the employment practices of any government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency or through the Secretary of Labor, to determine whether or not the contractual provisions specified in section 301 of this order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Committee, and the investigating agency shall report to the Committee any action taken or recommended.

(b) The Committee may receive and cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in section 301 of this order. The appropriate contracting agency or the Secretary of Labor, as the case may be, shall report to the Committee what action has been taken or is recommended with regard to such complaints.

(Appendix F)

Sec. 310. (a) The Committee, or any agency or officer of the United States designated by rule, regulation, or order of the Committee, may hold such hearings, public or private, as the Committee may deem advisable for compliance, enforcement, or educational purposes.

(b) The Committee may hold, or cause to be held, hearings in accordance with subsection (a) of this section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order, except that no order for debarment of any contractor from further government contracts shall be made without a hearing.

Sec. 311. The Committee shall encourage the furtherance of an educational program by employer, labor, civic, educational, religious, and other non-governmental groups in order to eliminate or reduce the basic causes of discrimination in employment on the ground of race, creed, color, or national origin.

Subpart D—Sanctions And Penalties

Sec. 312. In accordance with such rules, regulations or orders as the Committee may issue or adopt, the Committee or the appropriate contracting agency may:

(a) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order or of the rules, regulations, and orders of the Committee.

(b) Recommend to the Department of Justice that, in cases where there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in section 301 of this order,

appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the aforesaid provisions.

(c) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Committee as the case may be.

(d) Terminate, or cause to be terminated, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be terminated absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(e) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Committee that he has established and will carry out personnel and employment policies in compliance with the provisions of this order.

(f) Under rules and regulations prescribed by the Committee, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation mediation, and persuasion before proceedings shall be instituted under paragraph (b) of this section, or before a contract shall be terminated in whole or in part under paragraph (d) of

this section for failure of a contractor or subcontractor to comply with the contract provisions of this order.

Sec. 313. Any contracting agency taking any action authorized by this section, whether on its own motion, or as directed by the Committee, or under the Committee's rules and regulations, shall promptly notify the Committee of such action or reasons for not acting. Where the Committee itself makes a determination under this section, it shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Committee within such time as the Committee shall provide.

Sec. 314. If the Committee shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the Committee or, if the Committee so authorizes, to the contracting agency.

Sec. 315. Whenever a contracting agency terminates a contract, or whenever a contractor has been debarred from further government contracts, because of noncompliance with the contractor provisions with regard to non-discrimination, the Committee, or the contracting agency involved, shall promptly notify the Comptroller General of the United States.

Subpart E—Certificate Of Merit

Sec. 316. The Committee may provide for issuance of a United States Certificate of Merit to employers or employee organizations which are or may hereafter be en-

gaged in work under government contracts, if the Committee is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading and other practices and policies of the employee organization, conform to the purposes and provisions of this order.

Sec. 317. Any Certificate of Merit may at any time be suspended or revoked by the Committee if the holder thereof, in the judgment of the Committee, has failed to comply with the provisions of this order.

Sec. 318. The Committee may provide for the exemption of any employer or employee organization from any requirement for furnishing information as to compliance if such employer or employee organization has been awarded a Certificate of Merit which has not been suspended or revoked.

Part IV—Miscellaneous

Section 401. Each contracting agency (except the Department of Justice) shall defray such necessary expenses of the Committee as may be authorized by law, including section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691):[8] *Provided,* that no agency shall supply more than fifty per cent of the funds necessary to carry out the purposes of this order. The Department of Labor shall provide necessary space and facilities for the Committee. In the case of the Department of Justice, the contribution shall be limited to furnishing legal services.

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[8]31 U.S.C.A. § 691.

(Appendix F)

Sec. 402. This order shall become effective thirty days after its execution. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this order and of the rules and regulations of the Committee.

Sec. 403. Executive Order No. 10479 of August 13, 1953 (18 F.R. 4899),[9] together with Executive Orders Nos. 10482 of August 15, 1953 (18 F.R. 4944),[10] and 10733 of October 10, 1957 (22 F.R. 8135),[11] amending that order, and Executive Order No. 10557 of September 3, 1954 (19 F.R. 5655),[12] are hereby revoked, and the Government Contract Committee established by Executive Order No. 10479 is abolished. All records and property of or in the custody of the said Committee are hereby transferred to the President's Committee on Equal Employment Opportunity, which shall wind up the outstanding affairs of the Government Contract Committee.

JOHN F. KENNEDY

THE WHITE HOUSE,
March 6, 1961.

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[9] 41 U.S.C.A. prec § 1 note.
[10] 1953 U.S. Code Cong. & Adm. News, p. 1052.
[11] 41 U.S.C.A. prec. § 1 note.
[12] 41 U.S.C.A. prec. § 1 note.

APPENDIX G

DECREE OF PRELIMINARY INJUNCTION.

This cause coming on to be heard on plaintiffs' motion for a preliminary injunction; upon consideration of the evidence, argument of counsel, briefs, pleadings and the entire court record in this cause and based on the findings of fact and conclusions of law approved and signed by the court and particularly because the Constitution of the United States has been violated in discriminatory denial of job opportunities.

It Is Hereby Ordered, Adjudged And Decreed that the motion of the plaintiff, Michael Cochran for a preliminary injunction be and the same is hereby denied.

It Is Hereby Ordered, Adjudged And Decreed that the motions of plaintiffs, Ronald L. Todd and James Hill, for a preliminary injunction be and the same are hereby granted and the same hereby issue on the following named defendants, their officers, agents, servants, employees and attorneys and all persons in active concert and participation with them who receive actual notice of the order by personal service or otherwise, individually and collectively, jointly and severally, as follows:

1. That the Joint Apprenticeship Committee Of The Steel Workers Of Chicago And International Association Of Bridge, Structural And Ornamental Iron Workers Local Union No. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, and Edmund D. Flood, Apprentice Co-Ordinator, and each of them, are hereby commanded forth-

with to certify for indenture as apprentices the plaintiffs Ronald L. Todd and James Hill and to thereupon immediately tender them for employment as apprenticeship iron workers to Bethlehem Steel Company, and further, they are ordered hereinafter to cease and desist from continued and further discrimination against Negro applicants and applications.

2. That the defendants, International Association Of Bridge, Structural And Ornamental Iron Workers Local Union No. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs and Edmund D. Flood, Apprentice Co-Ordinator, are hereby commanded forthwith to admit the said plaintiffs, Ronald L. Todd and James Hill, to membership in the said Union as iron worker apprentices and they and each of them are hereby further restrained from interfering in any way directly or indirectly with the full and peaceful enjoyment by the said plaintiffs of all of the rights, privileges and profits lawfully appertaining to such membership, and further, they are hereinafter ordered to cease and desist from continued and further discrimination against Negro applicants for membership.

3. That the defendant, Bethlehem Steel Company, employ as apprentice iron workers the said plaintiffs, Ronald L. Todd and James Hill, upon their certification as indentured apprentice iron workers and admission to the Union as apprentice iron workers.

4. That the defendant, Board Of Education Of The City Of Chicago, enroll and admit Ronald L. Todd and James Hill to apprenticeship iron worker classes

upon their certification as indentured apprentice iron workers.

5. That the defendant, Alvin Dost, Regional Director of the Bureau of Appr iceship and Training, use the full facilities of his office to assure that there will be no further discrimination.

It Is Further Ordered, Adjudged And Decreed that the costs of this proceeding be taxed against the Joint Apprenticeship Committee Of The Steel Workers Of Chicago And International Association Of Bridge, Structural And Ornamental Iron Workers Local Union No. 1 and the Iron Workers Bridge And Structural Union, Local No. 1.

/s/ Nunc pro tunc as of October 16, 1963, William J. Campbell

Enter: William J. Campbell
Chief Judge, United States District Court

Dated: November 8, 1963